IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 7557 of 2007(Y)

OS.19/2003 of SUB COURT, IRINJALAKUDA
AS.174/2005 of I ADDL.DISTRICT COURT, THRISSUR

.....

PETITIONER:

SUGATHAN, AGED 54,
S/O. THALIYAPARAMBIL APPU,
KAIPAMANGALAM,
KODUNGALLUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT:

MOHANLAL, S/O. BALAPARAMBIL GANGADARAN,
KAIPAMANGALAM, KODUNGALLUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P. Balachandran, J.

W.P.(C)No. 7557 of 2007 Y

JUDGMENT

The petitioner is the plaintiff in O.S.No.19/03 on the file of the Sub Court, Irinjalakuda. The suit having been dismissed, he filed A.S.No.174/05 before the I Additional District Court, Thrissur. He filed Exhibit P3 petition before the appellate court seeking for permission to examine one Ajidatta as a witness. The appellate court, vide Exhibit P5 order, dismissed the said petition. The grievance of the petitioner is that in view of the dismissal of Exhibit P3 petition, the appellate court will not be able to consider and allow the application, even, in case, on the final hearing of the appeal, it finds that examination of the said witness is essential for a just decision being arrived at, she being a material witness.

In the circumstances, I dispose of this writ petition setting aside Exhibit P5 order, thereby

giving an opportunity to the appellate court to allow examination of the said witness or to remand the matter to have the witness examined, if it finds, on final hearing of the appeal, that the said witness is a material witness and opportunity should be given to the appellant to examine the said witness. It is made clear that setting aside of Exhibit P5 order is no indication that Exhibit P3 petition is to be allowed.

16th March, 2007 (K.P.Balachandran, Judge)

tkv